TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 10

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

STOCKHOLMS ENSKILDA BANK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 24, 1934
CERTIORARI GRANTED APRIL 30, 1934

SUPREME COURT OF THE UNITED STATES

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STOCKHOLMS ENSKILDA BANK

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65814—34——1

1 Before United States Board of Tax Appeals

Docket No. 55755

STOCKHOLMS ENSKILDA BANK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances:
For taxpayer, Sanford Robinson, Esq., Truman Henson, Esq., Marion N. Fisher, Esq.
For Commr., O. J. Tall, Esq.

Docket entries

1931
Apr. 8—Petition received and filed. Taxpayer notified. (Fee paid.)
" 8—Copy of petition served on general counsel.
May 13—Answer filed by general counsel.
" 20—Copy of answer served on taxpayer. General Calendar.
Dec. 11—Motion to advance hearing soon after 1/15/32 filed by taxpayer. 12/14/31 granted to 1/19/32.
" 15—Hearing set January 19, 1932.
1932
Jan. 19—Hearing had before Mr. Marquette, div. 1, on merits. Briefs due 2/29/32.
Feb. 6—Transcript of hearing Jan. 19, 1932, filed.
" 25—Brief filed by general counsel.
" 29—Brief filed by taxpayer.
Apr. 29—Opinion rendered, John J. Marquette, div. 1. Decision of no deficiency will be entered.
" 30—Decision entered, John J. Marquette, div. 1.
Oct. 18—Petition for review to the Court of Appeals of the District of Columbia with assignments of error filed by general counsel.
" 25—Proof of service filed.
" 26—Notice of the appearance of Marion N. Fisher as counsel filed.
" 26—Cross assignment of errors filed by taxpayer.
" 26—Proof of service of assignment of errors filed.

Dec. 5—Motion for extension to January 16, 1933, to file præcipe filed by general counsel.
" 5—Order enlarging time to January 16, 1932, for preparation of evidence and delivery of record entered.
" 20—Præcipe filed. Proof of service thereon.
" 23—Counter præcipe filed. Proof of service thereon.
1933
Jan. 16—Order enlarging time to February 1, 1933, for transmission and delivery of record sur petition for review entered.

2 Before United States Board of Tax Appeals

[Title omitted.]

Petition

Filed April 8, 1931

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Bureau symbols IT:AR:C–3, HBE–60D, dated February 12, 1931, and as the basis of this proceeding alleges upon information and belief as follows:

I

Your petitioner is a foreign corporation organized and existing under and by virtue of the laws of the Kingdom of Sweden with its principal office in Stockholm, Sweden; and has no office or place of business in the United States.

II

The notice of deficiency, copy of which is hereto attached, marked "Exhibit A," and by reference made a part hereof, was mailed to your petitioner on or after February 12, 1931.

III

The taxes in controversy are alleged income taxes for the calendar year 1927 in the sum of $1,172.32.

IV

The determination of the tax set forth in said notice of deficiency is based upon the following error:

The respondent erred in determining that the sum of $8,683.81, which was paid to your petitioner in 1927 by the United States Government as interest on a refund of Federal income taxes, was

to be treated as income from sources within the United States and taxable to your petitioner.

V

The facts upon which your petitioner relies as the basis of this proceeding are as follows:

(a) Your petitioner is a foreign corporation, organized and existing under and by virtue of the laws of the Kingdom of Sweden with its principal office in Stockholm, Sweden, and has no office or place of business in the United States.

3 (b) During the year 1927, your petitioner received from the United States Government the sum of $8,683.81 as interest on a refund of Federal income taxes theretofore overpaid for a prior year.

(c) Under the express provisions of the revenue act of 1926, the only income taxable to your petitioner is income from sources within the United States as determined in the manner provided in section 217 of said revenue act of 1926. By said section 217 of said revenue act of 1926, it is expressly and affirmatively provided that all interest shall be treated as income from sources without the United States except "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." Your petitioner alleges that said sum of $8,683.81 was not interest on a bond, a note or other interest-bearing obligation within the purview of said section 217 of said revenue act of 1926; and further that even if said sum were interest on a bond, note, or other interest-bearing obligation within the purview of said section 217 (which is denied), nevertheless and in any event the bond, note, or other interest-bearing obligation was not of a resident, corporate or otherwise, in that the United States is not a resident within the meaning of said section 217 of said revenue act of 1926.

(d) Under the express and affirmative provisions of the revenue act of 1926, said sum of $8,683.81 was interest to be treated as income from sources without the United States and was not taxable to your petitioner.

Wherefore, your petitioner prays that this board may hear this proceeding and determine that there is no deficiency.

Dated:

(Signed) TRUMAN HENSON,
Counsel for Petitioner, Office and P. O. Address,
26 Liberty Street, New York City, N.Y.

[*Duly sworn to by Sanford Robinson, jurat omitted in printing*]

4 *Exhibit A to petition*

IT:AR:C–3.
HBE–60D.

FEB. 12, 1931.

STOCKHOLMS ENSKILDA BANK,
% Sanford Robinson, 26 Liberty Street,
New York, New York.

SIRS: You are advised that the determination of your tax liability for the year 1927 discloses a deficiency of $1,172.32, as shown in the statement attached.

In accordance with section 274 of the revenue act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D.C., for the attention of IT:C:P–7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.

By (Signed) J. C. WILMER,
Deputy Commissioner.

Enclosures:
Statement.
Form 882.
Form 870.

STATEMENT

IT:AR:C–3.
HBE–60D.

In re: Stockholms Enskilda Bank, % Sanford Robinson, 26 Liberty Street, New York, New York

Tax liability

Year	Tax liability	Tax assessed	Deficiency
1927	$3,163.55	$1,991.23	$1,172.32

Reference is made to the report of the internal-revenue agent in charge, 17 Battery Place, New York, New York, and to your protest submitted under date of September 18, 1929.

5 Careful consideration has been accorded your protest in connection with the agent's findings and the report on the conference held with your representatives on October 7, 1929, in the office of the agent in charge. The adjustments recommended by the agent as the result of the conference have been approved by this office.

Your contention that the interest received on a refund of Federal income tax does not constitute taxable income for the reasons that it does not represent income from sources within the United States, is denied.

Section 233 (a) of the revenue act of 1926 provides that in the case of a foreign corporation, gross income means only gross income from sources within the United States.

Section 217 (a) (1) of the same act provides that in the case of a nonresident alien individual, interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, shall be treated as items of gross income from sources within the United States.

Section 116 of the act also provides that upon the allowance of a credit or refund of any internal-revenue tax erroneously collected interest shall be allowed and paid on the amount of such credit or refund at the rate of six per centum per annum from the date such tax was paid to date of the allowance of the refund.

It is held that the interest so paid was on an interest-bearing obligation of the United States and the amount received by your corporation should be included in gross income from sources within the United States.

Stockholms Enskilda Bank statement

Net income reported in the return	$31,993.53
Add: Interest received on Federal income-tax refund	8,683.91
Net income as adjusted	$40,677.44

For explanation of this item see previous statements.

COMPUTATION OF TAX

Net income as adjusted taxable 13½%	$40,677.44
Tax as 13½%	5,491.45
Less: Income tax paid at source	3,163.55
Tax assessable	3,163.55
Previously assessed	1,991.23
Deficiency	$1,172.32

A copy of this communication has been furnished your authorized representative, Mr. Sanford Robinson, 26 Liberty Street, New York, New York.

Exhibit B to petition

POWER OF ATTORNEY

Know all men by these presents:

That Stockholms Enskilda Bank, a corporation organized under the laws of the Kingdom of Sweden and doing business in the City of Stockholm, Sweden, does hereby make, constitute, and appoint
6 Sanford Robinson and Truman Henson, of #26 Liberty Street, New York, N.Y., its true and lawful attorneys for it and in its name, place, and stead, to represent it before the United States Treasury Department, the bureaus thereof, and the United States Board of Tax Appeals, and elsewhere, and to do any and all things needful and requisite with regard thereto; and

It further authorizes and empowers its said attorneys, or either of them, to make, execute, acknowledge, deliver, and file in its name and as its act and deed any and all Federal income-tax returns, including any and all amended returns, briefs, protests appeals, agreements for final determination, waivers of restrictions, claims, petitions to the United States Board of Tax Appeals, and all other documents and instruments of any and every nature whatsoever with respect thereto, and to begin, institute, prosecute, maintain, and/or settle any and all procedings before the United States Board of Tax Appeals, or elsewhere, to contest any and all deficiencies, assessments, or collections in the premises; and

It further authorizes and empowers its said attorneys, or either of them, to begin, institute, prosecute, maintain, and/or settle any and all appropriate proceedings for the recovery of any Federal income taxes which its said attorneys, or either of them, may deem to be or to have been erroneously or illegally collected from it and/or paid on its behalf, including making, executing, acknowledging, delivering, and filing in its name and as its act and deed any and all claims for refund, complaints, petitions, and/or any and all other instruments and documents in the premises, and to receive and receipt for any and all sums of money in that regard, and to endorse for it and in its name any and all checks, warrants, or other instruments for the payment of money of the United States in payment of any refunds;

Giving and granting unto its said attorneys, and each of them, full power and authority to do and perform all and every act and thing whatsoever requisite, necessary, and/or convenient in the premises or any part thereof as fully to all intents and purposes as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that its said attorneys or their substitutes shall lawfully do or cause to be done by virtue hereof, hereby revoking all previous powers of attorney in the premises.

In witness whereof, the said Stockholms Enskilda Bank has caused its corporate name to be signed hereunto by its vice president and its corporate seal to be affixed and attested by its secretary, all being done in the city of Stockholm, Kingdom of Sweden, on this tenth day of September 1929.

[CORPORATE SEAL.] STOCKHOLMS ENSKILDA BANK,
[SEAL.] By (Signed) J. WALLENBERG, *President.*
Attest:
Secretary.

KINGDOM OF SWEDEN,
City of Stockholm, ss:

On this 11th day of September 1929, personally appeared before me, a notary public in and for the city of Stockholm, Mr.
7 Jacob Wallenberg, president of the above-named corporation, to me personally known to be the person described in and who executed the foregoing power of attorney and acknowledged that he executed the same for the purposes therein set forth.

(Signed) BENGT STEUCH,
Acting Notary Public.

Fee and stamp:
Kr. 4:–
(Seal.) (Stamp.)

Before United States Board of Tax Appeals

Answer

Filed May 13, 1931

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits the allegations contained in paragraph III of the petition.

IV. Denies that the respondent erred in the manner alleged in paragraph IV of the petition.

V–(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph V of the petition.

V–(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph V of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore it is prayed that the petitioner's appeal be denied.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:
O. J. TALL,
Special Attorney, Bureau of Internal Revenue.

amm
5/12/31.

Before United States Board of Tax Appeals

STOCKHOLMS ENSKILDA BANK, PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 55755

In 1927 petitioner received from the United States a refund of overpaid income taxes, together with interest thereon. *Held*, such interest does not constitute gross income from sources within the United States as defined in section 217 (a) (1) of the revenue act of 1926.

TRUMAN HENSON, Esq., for the petitioner.
O. J. TALL, Esq., for the respondent.

Opinion

Promulgated April 29, 1932

MARQUETTE: The petitioner is a foreign corporation, organized and existing under and by virtue of the laws of the Kingdom of Sweden, with its principal office in said country, and has no office or place of business in the United States. During the year 1927 petitioner received from the United States Government the sum of $8,683.91 as interest on a refund of Federal income taxes heretofore overpaid for a prior year. The commissioner increased petitioner's income for the year 1927 by including therein said sum of $8,683.91; and on account of such increase determined a deficiency in the sum of $1,173.32, from which determination the petitioner brings this appeal.

The only question for decision is whether interest paid by the United States to a nonresident foreign corporation on a refund of Federal income taxes in 1927 is a part of gross income from sources within the United States as defined in section 217 (a) (1) of the revenue act of 1926.

Section 233 of the revenue act of 1926 provides as follows:

"(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217."

Section 217 (a) of the Revenue Act of 1926 provides in part as follows:

"(a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein. * * *"

Subdivision (c) of the said section 217 provides in part as follows:

"(c) The following items of gross income shall be treated as income from sources without the United States:

9 "(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

Section 284 (a) of the Revenue Act of 1926 provides:

" Where there has been an overpayment of any income, war-profits or excess-profits tax * * *, the amount of such overpayment shall * * * be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer."

Section 1116 of the Revenue Act of 1926 provides:

"(a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously * * * collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax * * * was paid to the date of the allowance of the refund."

The petitioner rests its case on two propositions, (1) that interest paid by the United States Government upon a refund of Federal income-taxes is not " interest on bonds, notes or other interest-bearing obligations " within the purview of section 217 (a) (1) of the act, and invokes the rule of ejusdem generis to support its contention; and (2) that in any event, the interest is not upon the obligations " of residents, corporate or otherwise ", for the reason that the United States is not a " resident " within the intent and meaning of the statute.

It is at once apparent that all interest, even though concededly from sources within the United States, is not to be treated as interest from sources within the United States, for subdivision (c) (1) of section 217 provides that interest other than that derived from sources within the United States as provided in paragraph (1) of

subdivision (a) shall be treated as income from sources without the United States. Therefore to constitute gross income from sources within the United States the interest herein must be brought within the provisions of said paragraph (1) of subdivision (a).

We think the petitioner's first contention cannot be sustained. The rule of ejusdem generis is but an aid in the construction of a statute, and the rule must give away where the statute manifests a contrary purpose. Reading this subdivision as a whole we think it is apparent that the Congress did not intend to restrict the inclusion to interest on obligations of a like character as bonds or notes, for it speaks of interest on deposits of a particular character which are not included, manifesting an intention that interest on other deposits should be included. The words "other interest-bearing obligations" should not, therefore, be restricted to obligations of a like character as bonds or notes.

The petitioner's second contention seems to contain more of merit. The statute provides for inclusion of interest on "interest-bearing obligations of residents, corporate or otherwise", and petitioner argues that even if the interest received is interest upon an interest-bearing obligation within the meaning of the statute, nevertheless the obligation is not that of a resident, corporate or otherwise. In other words its proposition is that the United States is not a "resident", and that the terms cannot be applied to a sovereign or government.

10 In State, Montgomery, prosecutor, *v.* Inhabitants of the City of Trenton, 40 N.J.L. 89, the Supreme Court of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents. The court said, in part:

"It is only by the greatest latitude of construction that we can say that the State resides within the State. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the State in its representative and governmental relation to its citizens. The people, as individuals, reside in the State, but the political body called the State cannot be said, in the proper use of language, to reside anywhere."

In Consorzio Veneziano di Armanemto e Navigazione, petitioner, *v.* Commissioner of Internal Revenue, respondent, 21 B.T.A. 984, 988, this board had occasion to discuss the question of whether interest paid on an award of just compensation to a foreign corporation came within the statute, and it was there said:

"In our opinion, even if the amount constituted interest, it was not interest on bonds, notes of other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligation of the United States are referred to they are referred to specifically as 'obligations of the United States.' The expression 'resident' in its ordinary acceptance does not refer to

the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning."

However, if this be a doubtful construction of the statute, we think the rule should be applied that the taxing statutes must be strictly construed, and if there be doubt as to the proper construction that doubt must be resolved in favor of the taxpayer. United States v. Merriam, 263 U.S. 179; Reinicke v. Northern Trust Company, 278 U.S. 339; Burnet v. Niagara Falls Brewing Co., 282 U.S. 648.

In United States v. Merriam, supra, the Supreme Court said:

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer."

We are, therefore, of opinion that the interest paid to the petitioner herein on a refund of Federal income taxes should not be treated as income from sources within the United States, within the purview of section 217 (a) (1) of the revenue act of 1926.

Decision of no deficiency will be entered.

11 Before United States Board of Tax Appeals, Washington

Docket No. 55755

STOCKHOLMS ENSKILDA BANK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the determination of the board, as set forth in its report promulgated April 29, 1932, it is

Ordered and decided: That there is no deficiency for the year 1927.

A true copy.

Teste:

[SEAL.] B. D. GAMBLE,
Clerk U.S. Board of Tax Appeals.

Enter:

(Signed) JOHN J. MARQUETTE,
Member.

Entered, Apr. 30, 1932.

In Court of Appeals of the District of Columbia

(Title omitted.)

Petition for review and assignments of error

Received and filed October 18, 1932

To the Honorable Judges of the Court of Appeals of the District of Columbia:

Now comes David Burnet, Commissioner of Internal Revenue, by his attorneys, G. A. Youngquist, Assistant Attorney General, C. M. Charest, general counsel, Bureau of Internal Revenue, and Otis J. Tall, special attorney, Bureau of Internal Revenue, and respectfully shows:

I

JURISDICTION

The petitioner on review (hereinafter referred to as the commissioner) is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the lows of the United States. The respondent on review (hereinafter referred to as the taxpayer) is a foreign corporation having no principal place of business or principal office or agency
12 in the United States, its principal place of business being Stockholm, Sweden. In accordance with section 1002 (c) of the revenue act of 1926, this case is subject to review by the Court of Appeals of the District of Columbia.

II

NATURE OF CONTROVERSY

The taxpayer, a foreign corporation with principal offices in Sweden, received from the United States Government during the taxable year 1927, the amount of $8,683.91, representing interest paid by the United States Government on a refund of Federal income taxes, which taxes the taxpayer had overpaid for a prior year. On February 12, 1931, the commissioner mailed a notice of deficiency. On April 8, 1931, the taxpayer filed an appeal from the notice of deficiency with the United States Board of Tax Appeals. The hearing of the said appeal by the Board of Tax Appeals was held on January 19, 1932. On April 21, 1932, the board promulgated its findings of fact and opinion and on April 30, 1932, entered its final order of redetermination, wherein and whereby the board ordered and decided that there was no deficiency for the year 1927.

The board's determination that there is no deficiency for the year 1927 cognizable in respect to the taxpayer is based upon the de-

cision of that tribunal to the effect that the interest received by the taxpayer during the year 1927 on a refund of income taxes overpaid for prior years does not constitute gross income from sources within the United States, as defined in section 217 (a) (1) of the revenue act of 1926.

III

ASSIGNMENTS OF ERROR

The commissioner says that in the record and proceedings before the United States Board of Tax Appeals and in the opinion and decision rendered and entered by said board manifest error occurred and intervened to the prejudice of the commissioner, and the commissioner assigns the following errors, and each of them, which, he avers, occurred in the said record, proceedings, opinion, and decision and upon which he relies to reverse the said opinion and decision so rendered and entered by the United States Board of Tax Appeals, to wit:

1. The United States Board of Tax Appeals erred as a matter of law in holding that the interest in the amount of $8,683.91 received by the taxpayer during the year 1927 does not constitute gross income from sources within the United States, as defined in section 217 (a) (1) of the revenue act of 1926.

2. The United States Board of Tax Appeals erred as a matter of fact and law in finding and/or holding that the United States is not a resident, corporate or otherwise, of the United States, within the meaning of section 217 (a) (1) of the revenue act of 1926.

3. The United States Board of Tax Appeals erred as a matter of fact and/or law in finding and/or holding that the United
13 States is not a resident within the meaning of section 217 (a) (1) of the 1926 act.

4. The United States Board of Tax Appeals erred in determining that there is no deficiency for the year 1927 in respect of the taxpayer.

5. The United States Board of Tax Appeals erred in failing to find a deficiency for the year 1927 in the amount of $1,173.32.

Wherefore the commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the Court of Appeals of the District of Columbia, that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

G. A. YOUNGQUIST,
Assistant Attorney General.
(*Signed*) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:
OTIS J. TALL,
Special Attorney, Bureau of Internal Revenue.

[*Duly sworn to by C. M. Charest; jurat omitted in printing.*]

In Court of Appeals of the District of Columbia

[Title omitted.]

Notice of filing petition for review

Received and filed Oct. 25, 1932

To: TRUMAN HENSON, Esq.,
26 Liberty Street, New York, New York.

You are hereby notified that the Commissioner of Internal Revenue, did, on the 18th day of October, 1932, file with the
14 clerk of the United States Board of Tax Appeals, at Washington, D.C., a petition for review by the Court of Appeals of the District of Columbia, of the decision of the board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 18th day of October, 1932.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 19th day of October, 1932.

TRUMAN HENSON,
Attorney for Respondent on Review.

In Court of Appeals of the District of Columbia

[Title omitted.]

Cross assignment of errors

Filed Oct. 26, 1932

To the Honorable Judges of the Court of Appeals of the District of Columbia:

Now comes Stockholms Enskilda Bank, the respondent on review, by its atorneys, Truman Henson and Marion N. Fisher, and says that the United States Board of Tax Appeals did not err in any of the particulars assigned as error by the petitioner on review herein, but correctly held, found, and decided in each and every of said particulars and in its determination that there is no deficiency for the year 1927 in respect of said respondent on review; but said respondent on review further says that it will rely for affirmance o

the decision of the United States Board of Tax Appeals herein not only upon the correctness of the holdings, findings, and decision of the United States Board of Tax Appeals herein in respect of each and all of the particulars assigned as error by the petitioner on review, but also, and in the alternative, upon the errors hereby assigned as follows:

1. The United States Board of Tax Appeals erred in finding and/or holding that the sum of $8,683.91 paid to the respondent on review during the year 1927 by the United States Government as interest on an overpayment of Federal income taxes theretofore made by said respondent on review for a prior year constitutes interest on bonds, notes, or other interest-bearing obligations within the meaning of section 217 (a) (1) of the Revenue Act of 1926.

2. The United States Board of Tax Appeals erred in failing
15 to find and/or hold that the sum of $8,683.91 paid to the respondent on review during the year 1927 by the United States Government as interest on an overpayment of Federal income taxes theretofore made by said respondent on review for a prior year is exempt from income tax by virtue of the provisions of section 213 (b) (4) of the revenue act of 1926.

Wherefore said respondent on review prays that, for the errors hereinabove assigned and/or either of them, and/or for the correctness of the findings, holdings, and decision of the United States Board of Tax Appeals in all particulars other than said errors hereinabove assigned, the decision of the United States Board of Tax Appeals in this cause be affirmed.

MARION N. FISHER,
TRUMAN HENSON,
Attorneys for Stockholms Enskilda Bank,
Office and P. O. Address, 26 Liberty Street, New York, N.Y.

In Court of Appeals of the District of Columbia

[Title omitted.]

Notice of filing cross assignment of errors

Filed Oct. 26, 1932

To: C. M. CHAREST, Esq.,
General Counsel, Bureau of Internal Revenue,
Internal Revenue Building, Washington, D.C.

You are hereby notified that the Stockholms Enskilda Bank did on the 26th day of October, 1932, file with the clerk of the United States Board of Tax Appeals at Washington, D.C., a cross assign-

ment of errors in the above-entitled case. A copy of such cross assignment of errors as filed is hereto attached and served upon you.

Dated this 26th day of October, 1932.

MARION N. FISHER,
TRUMAN HENSON,
Attorneys for Stockholms Enskilda Bank,
Office and P. O. Address, 26 Liberty Street, New York, N.Y.

Personal service of the above and foregoing notice together with a copy of assignment of errors mentioned therein is hereby acknowledged this 26th day of October, 1932.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

16 In court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for record

Received and filed Dec. 20, 1932

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the Court of Appeals of the District of Columbia, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals of the District of Columbia, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the board.
2. Pleadings before the board.
   (a) Petition, including annexed copy of deficiency letter.
   (b) Answer.
3. Opinion of the board.
4. Decision of the board.
5. Petition for review, together with proof of service of filing petition for review and of service of a copy of petition for review.
6. Order enlarging time, not included in record.
7. This præcipe.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Service of a copy of the within præcipe is hereby admitted this 16th day of December, 1932.

TRUMAN HENSON,
Attorney for Respondent.

In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for record

U.S. Board of Tax Appeals. Filed Dec. 23, 1932

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the Court of Appeals of the District of Columbia copies duly
17 certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals of the District of Columbia, heretofore filed by the Commissioner of Internal Revenue:

1. Cross assignment of errors, together with proof of service of notice of filing cross assignment of errors and of service of a copy of cross assignments of errors.

2. This præcipe.

(Sgd.) TRUMAN HENSON,
Attorney for Respondent.

Service of a copy of the within præcipe is hereby admitted this 21 day of December, 1932.

(Sgd.) C. M. CHAREST,
Attorney for Petitioner.

[Clerk's certificate to foregoing transcript omitted in printing.]

Before United States Board of Tax Appeals

Order enlarging time

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of
18 the above-entitled proceeding in the Court of Appeals for the District of Columbia be and it is herby extended to January 16, 1933.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Teste:
[SEAL.]

B. D. GAMBLE,
Clerk, U.S. Board of Tax Appeals.

Dated: Washington, D.C., Dec. 5, 1932.

Before United States Board of Tax Appeals

Order enlarging time

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above-entitled proceeding by the Court of Appeals, District of Columbia, be and it is hereby extended to Feb. 1, 1933.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Teste:
[SEAL.] B. D. GAMBLE,
Clerk, U.S. Board of Tax Appeals.
Dated Washington, D.C., January 16, 1933.

19 In Court of Appeals of District of Columbia

No. 5889

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

vs.

STOCKHOLMS ENSKILDA BANK

Order substituting party appellant

July 17, 1933

On consideration of the motion filed herein by counsel for the Commissioner of Internal Revenue to substitute Guy T. Helvering for David Burnet, retired, It is ordered by the court that Guy T. Helvering, Commissioner of Internal Revenue, be, and he is hereby, substituted as party appellant in the above entitled cause in the place and stead of David Burnet, retired.

20 [Minute entry of argument and submission, Nov. 10, 1933, omitted in printing.]

21 In Court of Appeals of the District of Columbia

No. 5889

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

v.

STOCKHOLMS ENSKILDA BANK

Appeal from the Board of Tax Appeals

Argued November 10, 1933. Decided December 4, 1933

G. A. Youngquist, Sewall Key, J. L. Monarch, W. C. Thompson, and C. M. Charest, all of Washington, D.C., for appellant.

Truman Henson, of New York City, for appellee.

Before Martin, Chief Justice, and Robb and Groner, Associate Justices.

Opinion

MARTIN, *Chief Justice:* An appeal from a decision of the Board of Tax Appeals.

The facts are simple and undisputed. The appellee is a foreign corporation having no office or place of business in the United States. In the year 1927, the United States Government paid to the corporation the sum of $8,683.91 as interest on a refund of Federal income taxes overpaid by it in a prior year. The interest was paid under the provisions of section 1116 of the Revenue Act of 1926, which provides:

"(a) Upon the allowance of a credit or refund of any internal revenue tax erroneously * * * collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax * * * was paid to the date of the allowance of the refund."

In the year 1927, the Commissioner increased the corporation's income by including therein an amount for the interest upon the refund aforesaid, to wit, $8,683.91, and assessed income tax thereon for that year, thereby determining a deficiency in the sum of $1,173.32, from which determination the taxpayer appealed to the Board of Tax Appeals.

The only question for decision by the Board was whether interest paid by the United States to a nonresident foreign corporation on a refund of Federal income taxes in 1927 was a part of its "gross income" from sources within the United States as defined by the Revenue Act of 1926.

22 Section 233 of the Revenue Act of 1926 provides as follows:

"(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217."

Section 217 (a) of the Revenue Act of 1926 provides, in part, as follows:

"(a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States: (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *.

* * * * * * *

"(c) The following items of gross income shall be treated as income from sources without the United States: (1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

The Board of Tax Appeals held that the interest paid by the Government upon the refund was not "income from sources within the United States" as defined by section 217, inasmuch as it was not interest accrued upon an obligation of a resident of the United States but upon an obligation of the United States Government which is not a "resident" within the intent and meaning of the act. The Board accordingly held that the interest received by the taxpayer was not taxable, and entered a decision of "no deficiency" upon the appeal. From that decision the present appeal was taken.

We think the Board's decision is correct. The amount of interest paid upon the refund to the foreign corporation would be taxable under the statute only in case the payment came within the classification of "Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *." The obligation, however, upon which interest was paid in this case was not that of a resident, corporate or otherwise, inasmuch as the United States is not a "resident", as that term is used in the taxing statute.

In United States v. Temple, 105 U.S. 97, the court said:

"Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation."

In State v. City of Trenton, 40 N.J.L. 89, the Supreme Court of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents. The court said, in part:

"It is only by the greatest latitude of construction that we can say that the State resides within the State. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the State in its representative and governmental relation to its citizens. The people, as individuals, reside in the State, but the political body called the State cannot be said, in the proper use of language, to reside anywhere."

In Consorzio Veneziano de Armanemto e Navigazione, Petitioner, v. Commissioner of Internal Revenue, 21 B.T.A. 984, 988, the Board, observed as follows:

23 "In our opinion, even if the amount constituted interest, it was not interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligations of the United States are referred to they are referred to specifically as 'obligations of the United States.' The expression 'resident' in its ordinary acceptance does not refer to the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning."

Article 1509 of Regulations 69 is cited by the Board in support of its decision.

As is stated by the Board in its decision "If this be a doubtful construction of the statute, we think the rule should be applied that the taxing statutes must be strictly construed, and if there be doubt as to the proper construction that doubt must be resolved in favor of the taxpayer. *United States* v. *Merriam*, 263 U.S. 179; *Reinicke* v *Northern Trust Company*, 278 U.S. 339; *Burnet* v. *Niagara Falls Brewing Co.*, 282 U.S. 648."

In the present case the application of this rule seems peculiarly appropriate inasmuch as the payment in question represented interest which the Government was paying as provided by statute because of an overassessment of income taxes theretofore imposed by the Government upon the taxpayer. To assess income taxes upon such a repayment would amount to the imposition of a penalty upon the taxpayer because of the error theretofore committed by the Government against him. *Escher* v. *Woods*, 281 U.S. 379.

The decision of the Board of Tax Appeals is hereby affirmed.

Mr. Justice Groner dissents.

A true copy.
Teste:

Clerk, D.C. Court of Appeals.

24 In Court of Appeals of District of Columbia

No. 5889. October Term 1933

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

vs.

STOCKHOLMS ENSKILDA BANK

Judgment

December 4, 1933

Appeal from the Board of Tax Appeals.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be and the same is hereby affirmed.

Per Mr. Chief Justice MARTIN,

DECEMBER 4, 1933.

Mr. Justice Groner dissents.

Mr. Justice Van Orsdel and Mr. Justice Hitz took no part in the consideration or decision of this case.

25 In the Court of Appeals of the District of Columbia

Præcipe for transcript of record

Filed Feb. 26, 1934

The Clerk will prepare a transcript of record in the above entitled case, including the following:

1. Printed record.
2. Order substituting Guy T. Helvering, Commissioner of Internal Revenue, in place of David Burnet.
3. Note of argument.
4. Opinion.
5. Judgment.
6. This designation, and Clerk's certificate.

J. CRAWFORD BIGGS,
Solicitor General,
Counsel for Appellant.

FEBRUARY, 1934.

[File endorsement omitted.]

26 [Clerk's certificate to foregoing transcript omitted in printing.]

29 In Supreme Court of the United States

Order extending time within which to apply for a writ of certiorari

Filed Feb. 27, 1934

On consideration of the motion of counsel for the petitioner in the above entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which a petition for a writ of certiorari may be filed herein be, and the same hereby is, extended for a period of sixty days from March 4, 1934.

Dated this 26th day of February, 1934.

CHARLES E. HUGHES,
Chief Justice of the United States.

[File endorsement omitted.]

30 Supreme Court of the United States

Order allowing certiorari

Filed April 30, 1934

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 38,498. District of Columbia, Court of Appeals. Term No. 10. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Stockholms Enskilda Bank. Petition for a writ of certiorari and exhibit thereto. Filed March 24, 1934. File No. 895 O.T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1934